



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

May 19, 2005

H.R. 742

Occupational Safety and Health Small Employer Access to Justice Act of 2005

*As ordered reported by the House Committee on the Judiciary
on May 18, 2005*

SUMMARY

H.R. 742 would amend the Occupational Safety and Health Act to permit small employers with 100 or fewer employees and net worth of not more than \$7 million to be awarded attorney fees and expenses if they prevail against the Occupational Safety and Health Agency (OSHA) in administrative or court proceedings.

CBO estimates that implementing H.R. 742 would cost \$4 million in 2006 and \$39 million over the 2006-2010 period, subject to the availability of appropriated funds. H.R. 742 would not affect direct spending or revenues.

H.R. 742 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 742 is shown in the following table. The costs of this legislation fall within budget function 550 (health).

	By Fiscal Year, in Millions of Dollars					
	2005	2006	2007	2008	2009	2010
SPENDING SUBJECT TO APPROPRIATION						
OSHA Spending Under Current Law						
Estimated Authorization Level ^a	464	478	491	505	519	533
Estimated Outlays	467	471	484	498	512	526
Proposed Changes						
Estimated Authorization Level	0	9	9	9	9	10
Estimated Outlays	0	4	7	9	9	10
OSHA Spending Under H.R. 742						
Estimated Authorization Level	464	487	500	514	528	543
Estimated Outlays	467	475	491	507	521	536

a. The 2005 level is the amount appropriated for that year for the Occupational Safety and Health Agency. The amounts for 2006 through 2010 are baseline projections that assume annual increases for anticipated inflation.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted in the fall of 2005, that the estimated amounts will be appropriated for each year, and that outlays will follow historical spending patterns for similar activities authorized under the Equal Access to Justice Act (EAJA).

H.R. 742 would amend the Occupational Safety and Health Act to allow employers with 100 or fewer employees and less than \$7 million in net worth to be awarded reasonable attorney fees and expenses if they prevail in an adversarial adjudication or a court proceeding in which they contest a citation made by OSHA. Under the EAJA, the payment of fees and expenses would be made from the agency's discretionary appropriations. CBO estimates that implementing H.R. 742 would cost \$4 million in 2006 and \$39 million over the 2006-2010 period, subject to the availability of appropriated funds.

Currently under the EAJA, a prevailing party with fewer than 500 employees and less than \$7 million in net worth may recover their legal expenses, but only when it is found that the action brought by the United States is not substantially justified or when special circumstances would make an award unjust. In practice, OSHA actions (that is, citations pursuant to the Occupational Safety and Health Act) have nearly always met those standards. (Only a handful of employers with 100 or fewer employees were awarded fees and expenses

after prevailing against OSHA in 2003.) Regardless of whether OSHA's actions were substantially justified or the award unjust, OSHA would be required, under H.R. 742, to pay fees and expenses of small employers who prevail in administrative or court proceedings.

According to data from the agency, each year OSHA issues citations in about 28,000 cases across all employer groups. Employers with fewer than 101 employees accounted for about 70 percent of that caseload. (Most small employers cited by OSHA are construction-related firms.) Only about 7 percent of the citations made to small firms are contested, or about 1,400 cases per year. Of these contested cases, CBO estimates that about 400 would involve either adjudication in an administrative proceeding or judicial review, based on the percentage of all contested cases that reached these levels over the past two years.

In addition, CBO assumes that small employers would prevail against OSHA on at least one count in over half of the cases that reach the required administrative or judicial level. This assumption is based on the historical rate at which all employers prevail when they contest OSHA citations. In 2006, CBO assumes OSHA would reimburse small employers about \$40,000 in legal costs, on average, when they prevail in overturning OSHA actions. That assumption is based on a survey of OSHA awards to small employers in 2003 and the expectation that the awards will grow with inflation. CBO assumed the average award under H.R. 742 would be 50 percent higher than under current law because reductions for substantial justification would be removed.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 742 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

PREVIOUS CBO ESTIMATE

On April 15, 2005, CBO transmitted a cost estimate for H.R. 742 as ordered reported by the House Committee on Energy and Commerce on April 13, 2005. The version of H.R. 742 approved by House Committee on the Judiciary is identical to the version approved by the Committee on Energy and Commerce, as is CBO's estimate of the budgetary effect of implementing the bill.

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